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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,013	03/22/2006	Hiromasa Iwashita	25040-1611	2507
29052 7590 08/29/2007 SUTHERLAND ASBILL & BRENNAN LLP 999 PEACHTREE STREET, N.E. ATLANTA, GA 30309			EXAMINER MAI, TRI M	
			ART UNIT 3781	PAPER NUMBER
			MAIL DATE 08/29/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/573,013	<b>Applicant(s)</b> IWASHITA ET AL.	
	<b>Examiner</b> Tri M. Mai	<b>Art Unit</b> 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3,5 and 6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5 and 6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                      | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

### DETAILED ACTION

1. Claims 1-3, and 5-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the specification set forth the body rotate from the bottom to the neck. The drawing shows the body does not have a height extending from the bottom to the neck.

In claims 1-3, "the cross-sectional shape of the body rotates" is confusing. The cross-section shape" does not rotate. The body is twisted about vertical central axis. The term "the cross-sectional shape" denotes a two dimensional planar shape, and it does not rotate.

2. Claims 1-3 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Frydlender (D168932) in view of Sudbeaz (2858558). Frydlender teaches a bottle having a shoulder, a body, bottom, a cross sectional shape at the body is a regular polygon, each angle of the polygon is rounded off and an arc as claimed (there is a small rounded corner noticeable in Fig. 4). The cross-sectional shapes have the same shape at any portion of the body. Frydlender has a circle circumscribed about the cross sectional shape as claimed, i.e, the apex of the angle rotate to the next angle thus creating a circle circumscribed about the cross sectional shape as claimed.

With respect to the new limitation of cross-sectional shapes of the body rotate symmetrically around the central axis in proportion to the height along the central axis. It is submitted that the claim set forth the shoulder being separate from the body. This limitation only set forth the body being rotated and that is what is taught in Frydlender. Furthermore, it is noted that the shoulder in Frylender having is flat. Thus, the body of Frydlender rotates in proportion to a height along the central axis from the bottom to the neck as claimed.

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Sudbeaz teaches that it is known in the art to make a bottle from either plastic or glass (Sudbeaz, col. 2, ln. 25). It would have been obvious to one of ordinary skill in the art to make the bottle from either plastic or glass to provide the desired material for the bottle.

Furthermore, Sudbeaz teaches a flat shoulder. Thus to provide a flat shoulder as taught by Sudbeaz would have been obvious to provide an alternative top for the bottle.

Regarding claim 2, it would have been obvious for one of ordinary skill in the art to provide the rotation angle as claimed. A change in size/proportion is generally recognized as being within the level of ordinary skill in the art. ( see In re Rose, 105 USPQ 237 (CCPA 1955), and In re Tanczyn, 44 CCPA 704, 766, 241)

Regarding claim 3, note the apex of the angle twists to the next angle thus creating a circle circumscribed about the cross sectional shape as claimed.

3. Claim 1-3 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Frydlender rejection, as set forth above, and further in view of either Herrmann et al. (D520432) or O'Reilly (D328 432). To the degree it is argued that that Frydlender does not teach the arc at each angle. It would have been obvious for one of ordinary skill in the art to provide round edges at the corner as taught by either Herrmann et al. or O'Reilly, to provide added safety from sharp edges.

4. Claim 5 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Frydlender, as set forth in paragraphs 2 and 3, and further in view of Sugiura (5928742). The Frydlender combination meets all claimed limitations except for bottle is made from PET. It would have been obvious for one of ordinary skill in the art to make the bottle from PET as taught by Sugiura to provide the desired plastic for the bottle.

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5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Frydlender, as set forth in paragraphs 2 and 3, and further in view of either Ota or Rumney. The Frydlender combination meets all claimed limitations except for the cross section being hexagonal. It would have been obvious to one of ordinary skill in the art to provide a hexagonal bottle as taught by either Ota or Rumney to provide the desired shape for the bottle. A change in shape would have been an obvious matter, since the claimed is nothing more than one of numerous configurations a person of ordinary skill in the art would find obvious. (See *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459).

Matter relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. In re Seid, 161 F.2d 229, 73 USPQ 431 (CCPA 1947).


6. Applicant's arguments filed have been fully considered but they are not persuasive. As set forth above, the new limitation does not read over the prior art of record. The new limitation only set forth the body being rotated and that is what is shown in Frydlender. Furthermore, it is noted that the shoulder in Frylender is flat. Thus the body of Frydlender rotates in proportion to a height along the central axis from the bottom to the neck as claimed.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tri M. Mai   
Primary Examiner  
Art Unit 3781